

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Casey Alan Johns,

Petitioner

v.

Perry Russell, *et al.*,

Respondents

Case No. 2:23-cv-00870-CDS-VCF

**Order Granting Motion for Leave to File a  
Second Amended Petition**

[ECF No. 14]

I previously appointed counsel for petitioner Casey Alan Johns in this habeas corpus action on July 26, 2023. ECF No. 7. Counsel made an initial appearance for Johns on August 24, 2023. ECF No. 10. On August 25, 2023, I issued a scheduling order, which, among other things, granted Johns 90 days (until and including November 27, 2023) to file an amended habeas petition. ECF No. 11.

On August 28, 2023, Johns filed a first amended petition and moved for leave to file a second amended petition. ECF Nos. 12, 14. Johns states in his motion that he filed the first amended petition in such a short time because of his understanding that the expiration of the applicable limitations period was imminent. *Id.* at 2. Johns requests leave to file a second amended petition so that he has a reasonable opportunity to prepare an amended petition that fully reflects counsel's considered judgment. *Id.* at 3. Johns further requests that I waive the requirement of LR 15-1(a), explaining that that rule is ill-suited for this situation. *Id.* Respondents argue that Johns' motion should be denied because he failed to attach a proposed second amended petition to his motion. ECF No. 15 at 2.

Local Rule 15-1(a) states that a proposed amended pleading must be submitted with the motion for leave to amend unless otherwise permitted by the court. When the court appoints counsel to represent habeas corpus petitioners, as a matter of course it gives counsel leave to file an amended petition. The only difference here is that counsel is trying to file a petition before the one-year deadline to minimize the probability that grounds for relief would not relate back

1 to a timely petition. I see no reason to depart from this usual practice in habeas corpus cases.  
2 Moreover, under Federal Rule of Civil Procedure 15(a)(2), a party may amend a pleading with  
3 the court's leave. "The court should freely give leave when justice so requires." Fed. R. Civ. P.  
4 15(a)(2).

5 I find that there is good cause for Johns to file a second amended habeas petition, so I  
6 grant Johns' motion and waive the requirement of LR 15-1(a). This order does not, however,  
7 affect, in any manner, the operation of the statute of limitations in this case, and I do not mean in  
8 this order to convey any opinion whatsoever about when the limitations period expires (or  
9 expired).

10 It is therefore ordered that Johns' Motion for Leave to File a Second Amended Petition  
11 [ECF No. 14] is GRANTED. Johns will have up to and including November 27, 2023, to file a  
12 second amended petition. In all other respects, the schedule for further proceedings set forth in  
13 the order entered August 25, 2023 (ECF No. 11) will remain in effect.

14 DATED: September 5, 2023

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18 UNITED STATES DISTRICT JUDGE  
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